

CHARLESTOWN MALL OF UTICA, LLC

*Three Hopper Street
Utica, NY 13501
Tel. (315) 266-0030
Fax (315) 292-7511*

August 12, 2010

*Terry Kish
On-Scene Coordinator
Emergency and Remedial Response Division
Removal Action Branch
U.S. Environmental Protection Agency/Region II
2890 Woodbridge Avenue (MA211)
Edison, NJ 08837*

*U.S. Environmental Protection Agency/Region II
Office of Regional Counsel
New York Caribbean Superfund Branch
290 Broadway – 17th Floor
New York, NY 10007-1866
Attn: Henry Guzman*

RE: Charlestown Mall Site, Frankfort, Herkimer County, New York: Notice of Potential Liability and Request for Information Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601-9675.

Dear Mr. Kish and Mr. Guzman:

Per your letter dated June 25, 2010, enclosed please find Charlestown Mall of Utica, LLC's response and attachments requested.

If you need anything further, please do not hesitate to contact me.

*Very truly yours,
Charlestown Mall of Utica, LLC*


Michael J. Cancilla, Manager

CHARLESTOWN MALL OF UTICA, LLC

*Three Hopper Street
Utica, NY 13501
Tel. (315) 266-0030
Fax (315) 292-7511*

August 12, 2010

RESPONSES TO ATTACHMENT 2 – REQUEST FOR INFORMATION REGARDING CHARLESTOWN MALL SITE, FRANKFORT, NY

1. *CHARLESTOWN MALL OF UTICA, LLC, 3 Hopper Street, Utica, NY 13501.*
2. *Charlestown Mall of Utica, LLC, has two members and two managers. The members are Michael J. Cancilla, 3 Hopper Street, Utica, NY 13501 and Frank Raspante, PO Box 57, New Hartford, NY 13413 and managers are Michael J. Cancilla and Upstate Associates of Utica, Inc.*
3. *Charlestown Mall of Utica, LLC – Ownership became effective in Oneida County on 2/27/08 and in Herkimer County on 3/12/09.*
4. *Michael Cancilla – Manager
Frank Raspante – Member – no decision making authority
Upstate Associates of Utica, Inc. - Manager*
5. *Michael Cancilla, Member and Manager, 3 Hopper Street, Utica, NY 13501
Frank Raspante – Manager, PO Box 57, New Hartford, NY 13413
Upstate Associates of Utica, Inc., Manager, 3 Hopper Street, Utica, NY 13501*
6. *None*
7.
 - a. *None*
 - b. *None*
 - c. *None*
 - d. *None*
 - e. *None*
 - f. *None*
 - g. *None*
 - h. *None, however, this is the company that defaulted on its loan payment to Capital Prime Properties Two, Inc., who held a deed in lieu of foreclosure.*
 - i. *None*
 - j. *None*
 - k. *None*
 - l. *None*
 - m. *None to Prime Capital Properties Two, Inc., however, I believe this was intended to be Capital Prime Properties Two, Inc. No business or legal relationship, except that Frank Raspante is a shareholder of Capital Prime Properties Two, Inc.*
 - n. *Manager of Charlestown Mall of Utica, LLC*
 - o. *None – Mr. Wakefield worked for JLB Enterprises.*

p. *Legal relationship – Charlestown Mall of Utica, LLC entered into a contract with JLB Enterprises sometime in mid January 2008 for the demolition and salvage rights of buildings located at the Charlestown Mall site. Relationship ended approximately January 30, 2008.*

8. *The Company did not purchase the property. The property was obtained by Capital Prime Properties Two, Inc. via Deed in Lieu of Foreclosure. Thereafter, Capital Prime Properties Two, Inc. transferred the real property to Charlestown Mall of Utica, LLC.*
9. *Providing 2008 Partnership Income Tax Return (Form 1065). The Company is currently on extension for year ending December 31, 2009. No tax returns filed prior to 2008 as the LLC was not in existence. There are no audited financial statements. Unaudited financial statements being enclosed.*
10. *2008 New York State Tax return enclosed. 2009 New York State return is on extension until October 15, 2010.*
11. *None available.*
12. *January 31, 2008 when Lou Carrack of NYSDOL advised of Code Rule 56 survey requirement, "No Trespassing" signs were placed conspicuously throughout the site to secure the premises and prevent unauthorized entry.*
13. *No, the company was never notified.*
14. *#5 was demolished. The contractor involved was JLB Enterprises and Harold Wakefield worked for JLB Enterprises.*
15. *J.L.B. Enterprises and Harold Wakefield*
16. *Charlestown Mall of Utica has never engaged in any manufacturing operations at the site and therefore has never generated any hazardous waste or industrial waste.*
17. *To the best of deponent's knowledge, there were no leaks or spill.*
 - a. *Upon information and belief, there were asbestos fibers released sometime after January 30, 2008 and April 8, 2008.*
 - b. *Harold Wakefield demolished part of building #5 without the knowledge or consent of Charlestown Mall of Utica, LLC.*
 - c. *Unknown*
 - d. *Around building #5*
 - e. *Unknown*
 - f. *No notification provided because USEPA, NYSDEC and NYSDOL were already on notice and on-site.*
 - g. *There was an investigation sometime in October/November 2008, wherein samples were taken by the DEC for testing purposes. During 2009, Terri Kish from the USEPA was on site several times evaluating and taking samples from the property.*
 - h. *Harold Wakefield, James Bent, Jr., Louis Carrack, David Clarke, NYDEC, Patrick Fraccola, USEPA, Several unknown NYSDEC and USEPA employees on site.*
18. *None other than investigations done by NYSDEC and USEPA.*
19. a. *With the exception of Building #5, all building at the site are in substantially the same condition as they existed when Charlestown Mall of Utica, LLC acquired the site. Building #5 was partially demolished by JLB Enterprises and Harold Wakefield, and also suffered storm damage from high winds.*
 - b. *Following notification by NYSDOL, Charlestown Mall of Utica, LLC has not contracted with any entity for demolition of buildings at the site and will not undertake*

any demolition or renovation activities at the site without a prior asbestos survey and proper abatement in compliance with NYSDOL Code Rule 56 and the NEASHAP for asbestos.

c. Charlestown Mall of Utica, LLC did not personally perform any demolition. It contracted with JLB Enterprises for the demolition of buildings on the site. Part of building #5 was demolished by JLB Enterprises and its employee, Harold Wakefield.

20. None known

21. None available. Building was and is not insurable

22. None available.

23. N/A

24. Harold Wakefield, address unknown.

CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

Charlestown Mall Site, Frankfort, Herkimer County, New York

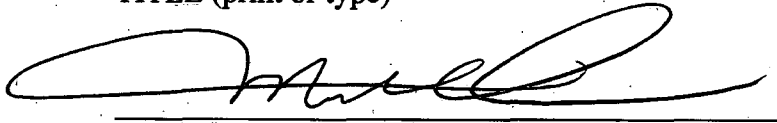
State of NEW YORK

County of ONEIDA


I certify under of law that I have personally examined and am familiar with the information and all documents submitted in response to EPA's Request for Information, and based on my inquiry of those individuals immediately responsible for obtaining the information I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company response thereto should become known or available to the company.

MICHAEL CANCELLA
NAME (print or type)

MANAGER
TITLE (print or type)


SIGNATURE

Sworn to before me this 26 day
of JULY, 2010


Notary Public

MARY R. CANCELLA
Notary Public, State of New York
Reg. No. 01CA6185519
Qualified in Oneida County
Commission Expires April 21, 20 12

Oneida County - State of New York
Sandra J. DePerno - Oneida County Clerk
800 PARK AVE
UTICA, NY 13501
COUNTY CLERKS RECORDING PAGE
THIS PAGE IS PART OF THE INSTRUMENT



RECEIPT NO. : 2008138789

Instr #: 2008-003066
Rec Date: 02/27/2008 03:51:14 PM
Doc Grp: RP
Descrip: DEED
Num Pgs: 7

Party1: CAPITAL PRIME PROPERTIES TWO
INC
Party2: CHARLESTOWN MALL OF UTICA LLC

Recording:

Cover Page	5.00
Number of Pages	23.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00
RP5217 Residential/Agricu	66.00
RP5217 - County	9.00
Revenue Stamp Amount	0.00

Total: 128.00
**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****

Transfer Tax# : 4057

Consideration: 0.00
Transfer Tax: 0.00

Record and Return To:

CHARLESTOWN MALL OF UTICA LLC
3 HOPPER STREET
UTICA NY 13501

WARNING***

I hereby certify that the within and foregoing was recorded in the Oneida County Clerk's Office, State of New York. This sheet constitutes the Clerks endorsement required by Section 316 of the Real Property Law of the State of New York.

Sandra J. DePerno
Oneida County Clerk

Ford, New York 13413

APR 2008
FILED
DEPT. OF ASSESSMENT
& TAXATION
UTICA, NY

7

New York 13413

13501

13501

WITNESSETH, that the party of the first part, in consideration of One and 00/100 (\$1.00) Dollar lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, their heirs and assigns forever.

ALL THAT certain piece or parcel of land situate in the City of Utica, County of Oneida and State of New York, and all the tract or parcel located int the County of Herkimer, more particularly described in Schedule "A", which is attached.

TOGETHER, with the appurtenances and all the estate and rights of the parties of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the parties of the second part forever.

AND the parties of the first part covenants as follows:

FIRST, that the party of the second part shall quietly enjoy the said premises;

SECOND, that the parties of the first part will forever WARRANT the title to said premises;

THIRD, the parties of the first part, in compliance with Section 13 of the Lien Law, covenants that the parties of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the

2008138789

2008-003066

2/27/2008 03:51:14 PM
Page 1 of 7
DEED

Sandra J. DePerno, Oneida County Clerk

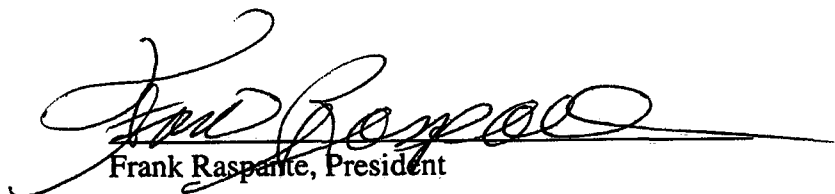
improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

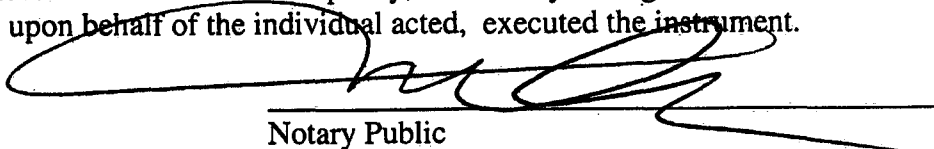
IN PRESENCE OF:

CAPITAL PRIME PROPERTIES TWO, INC.


Frank Raspante, President

STATE OF NEW YORK)
COUNTY OF ONEIDA) ss.:

On the 19 day of October, 2007, before me, the undersigned a notary public in and for said state, personally appeared Frank Raspante, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names are subscribed to within instrument, and acknowledged that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of the individual acted, executed the instrument.


Notary Public

MICHAEL CANCELLA
NOTARY PUBLIC, State of New York
Qualified in Oneida County
Commission Expires June 22, 2010

Schedule "A"

FIRST DESCRIPTION.

ALL THOSE THREE PARCELS of land, one of which is situate in the Town of Frankfort, County of Herkimer and State of New York, and the other two thereof being situate in the City of Utica, County of Oneida and State of New York, separately bounded and described as Parcel A, Parcel B and Parcel C according to two plans of a survey made by A.A. Santucci & Associates, dated November 25, 1977 and November 30, 1977, respectively, as follows: VIZ:

PARCEL A, situate in Frankfort, Herkimer County, New York,

BEGINNING at the point where the northerly line of the former West Shore Railroad is intersected by the dividing line between Oneida County and Herkimer County; thence measuring South 65 degrees 17 minutes East, along the northerly line of the former West Shore Railroad, a distance of 1991.64 feet to a point marked by an iron pipe, said point being also the easterly corner of a triangular parcel of land formerly owned by the Sperry Rand Corporation; thence measuring South 46 degrees 05 minutes 33 seconds east, a distance of 304.20 feet to a point on the northerly line of Bleecker Street marked by an iron pipe, said point being opposite centerline Station 1202-273.57 on said Railroad's monumented centerline; thence measuring North 65 degrees 17 minutes West, along the northerly line of Bleecker Street, a distance of 2314.61 feet to a point on the dividing line between Oneida County and Herkimer County; thence at an interior angle of 70 degrees 20 minutes, measuring northeasterly along said dividing line, a distance of 106.20 feet to the point of beginning.

CONTAINING 215,312 square feet, or 4.95 acres, more or less.

EXCEPTING THEREOUT AND THEREFROM, the parcel of land conveyed by the New York Central Railroad Company to Joseph P. Jonquil and Mary Jonquil by deed recorded November 27, 1967 in the Herkimer County Clerk's office at Book 591 of Deeds, Page 885, being a parcel of land fronting on the northerly line of Bleecker Street measuring 200 feet front and rear by 36.5 feet deep, located opposite and between centerline Stations 1204-166 and 1204-366 on said Railroad's monumented centerline.

PARCEL B, situate in Utica, Oneida County, New York.

BEGINNING at the point where the northerly line of the former West Shore Railroad is intersected by the dividing line between Oneida County and Herkimer County; thence measuring and southwesterly along said dividing line a distance of 106.20 feet to the northerly line of Bleecker Street; thence measuring North 65 degrees 17 minutes West, along the northerly line of Bleecker Street, a distance of 116.95 feet to a point, said point also being the southeasterly corner of premises conveyed by the New York Central Railroad Company to Angelo DeSantis by deed recorded January 28, 1964 in the Oneida County Clerk's office at Book 1775 of Deeds, Page 227; thence at an interior angle of 74 degrees 05 minutes, measuring northeasterly along the easterly boundary of said DeSantis parcel, a distance of 37.96 feet to a point; thence at an interior angle of 285 degrees 55 minutes and measuring North 65 degrees 17 minutes West, a distance of 210.41 feet to a point at the northwesterly corner of said DeSantis parcel, being also the southeasterly corner of premises conveyed by the Trustees of the Penn Central Transportation Company, Debtor to Francis D Spiridigliozzi and Ralph Ventura by deed recorded July 19, 1973 in the Oneida County Clerk's office at Book 1973 of Deeds, Page 571; thence at right angles, measuring northeasterly along the easterly boundary of said Spiridigliozzi and Ventura Parcel, a distance of 20.0 feet to a point on the northerly boundary of said parcel; thence measuring along the same North 65 degrees 17 minutes West, a distance of 573.91 feet to a point; said point being opposite centerline Station 1205-479.08 on said Railroad's monumented centerline; thence at right angles, measuring north easterly, a distance of 43.50 feet to a point on the northerly line of the former West Shore Railroad; thence at right angles measuring South 65 degrees 17 minutes East along the northerly line of the former West Shore Railroad, a distance of 926.60 feet to the point of beginning.

CONTAINING 50,626 square feet or 1.16 acres, more or less.

PARCEL C, situate in Utica, Oneida County, New York.

BEGINNING at a point on the northerly line of the former West Shore Railroad bearing North 65 degrees 17 minutes West for a distance of 926.60 feet from the point where said northerly line intersects the dividing line between Oneida County and Herkimer County, said point of beginning also being opposite centerline Station 1205-479.08 on said Railroad's monumented centerline; thence at right angles to the said northerly line of the former West Shore Railroad and measuring southwesterly a distance of 43.50 feet to a point on the northerly boundary of premises conveyed by the Trustees of Penn

Central Transportation Company, Debror, to Francis D. Spiridigliozzi and Ralph Ventura by deed recorded July 19, 1973 in the Oneida County Clerk's office at Book 1973 of Deeds, Page 571; thence at right angles measuring North 65 degrees 17 minutes West, a distance of 426.09 feet to a point at the northwesterly corner of said Spiridigliozzi and Ventura parcel, said point being opposite centerline Station 1205+905.17 on

Said Railroad's monumented centerline; thence at right angles, measuring southwesterly a distance of 56.50 feet to a point on the northerly line of Bleecker Street; thence measuring North 65 degrees 17 minutes West, along the northerly line of Bleecker Street, a distance of 121.70 feet to a point, being the Point of Tangency of a curve having a radius of 789.92 feet and having a central angle of 16 degrees 15 minutes, said point also being 50 feet southerly at right angles from centerline Station 1206+026.7 on the centerline of the former West Shore Railroad;

thence measuring westerly along the northerly line of Bleecker Street, chord distance of 223.28 feet to the point of curvature of the curve hereinbefore mentioned; thence measuring westerly along the northerly line of Bleecker Street and parallel with an existing bridge abutment, a distance of 291.50 feet to a point on the northerly line of the former West Shore Railroad, said point being marked by an iron pipe; thence at an interior angle of 16 degrees 16 minutes and measuring South 65 degrees 17 minutes East along the northerly line of the former West Shore Railroad, a distance of 1051.84 feet to the point of beginning.

CONTAINING 62.905 square feet or 1.44 acres, more or less.

EXCEPTING and reserving, however, to Grantor all existing wire and pipe agreements, occupancies and licenses, if any between Grantor and other parties, of record or not of record, that in any way encumber the premises, together with the right to convert said agreements, occupancies and licenses into permanent easements at any time, and convey such easements to the occupant without securing approval of the Grantees herein. Grantor specifically reserves and retains all rentals, fees and considerations resulting from such agreements, occupancies, licenses and easement conversion.

SUBJECT, however, (1) to any easement, encumbrance, right or benefit that may have been created or recognized in or by that certain deed from the Grantor herein to Consolidated Rail Corporation designated as Document No. PC-CRC-RP-113 in the certification, as amended, of United States Railway Association to the Special Court pursuant to Section 209 (d) of the Regional Rail Reorganization Act of 1973, said deed not yet having been recorded; and (2) to the state of facts disclosed by the aforementioned survey.

EXCEPTING AND RESERVING all that parcel of land conveyed by the party of the first part to Hamilton Digital Controls, Inc. by deed recorded in the Oneida County Clerk's office on December 21, 1978 in Book 2074 of Deeds at page 1092.

Being part of the same premises conveyed to the party of the first part by deed dated June 9, 1978 and recorded in the Oneida County Clerk's Office on June 28, 1978 in Book 2066 of Deeds at page 343 and also recorded in the Herkimer County Clerk's Office on June 30 1978 in Book 659 of Deeds at page 94.

SECOND DESCRIPTION

BEGINNING at a point in the northerly line of Bleecker Street (80 feet wide) said point being opposite Chaining Station 1204 + 366 in the monumental center line of the West Shore Railroad of the Grantor; and running

Thence northerly, 36.5 feet to a point distant southerly 20 feet measured at right angles from said center line at said Chaining Station 1204 + 366 therein;

Thence easterly, parallel with said center line 200 feet to a point opposite Chaining Station 1204 + 166 in said center line;

Thence southerly, at right angles to the last preceding course, 36.5 feet to a point in said northerly line of Bleecker Street (80 feet wide);

Thence westerly, along said northerly line to Bleecker Street (80 feet wide), 200 feet, to the point and place of beginning;

CONTAINING 7,300 square feet of land, more or less.

AND by the acceptance of this deed the Grantee covenants and agrees to and with the New York Central Railroad Company that the Grantee immediately after the delivery of this deed, shall erect and thereafter maintain, at its sole cost and expense, a suitable fence satisfactory to the Chief Engineer of the New York Central Railroad Company between the parcel of land hereby conveyed and the remaining lands of the New York Central Railroad Company. This covenant is and shall be deemed to be a real covenant running with the land for all time and shall inure to the benefit of and be binding upon the

parties hereto and their respective heirs, successors, and assigns forever.

BEING the same premises conveyed by Joseph P. Jonquil and Mary R. Jonquil to Charles A. Gaetano by Deed dated May 18, 1979, and recorded in the Herkimer County Clerk's Office on May 29, 1979, in Book of Deeds 665 at Page 54.

THIRD DESCRIPTION

THAT CERTAIN piece or parcel of land situate in the City of Utica, County of Oneida and State of New York and in the Town of Frankfort, County of Herkimer and State of New York, bounded and described as follows: Beginning at the point of intersection of the southwesterly line of Dwyer Ave with the southeasterly line of Pixley Street and running thence S.45 deg. 33 min. 40 sec. E. along said Dwyer Avenue line two hundred thirty-seven (237.0) feet to a point in the southeasterly line of Turner Street; thence N.40 deg.41 min. 20 sec. E along said Turner Street line twenty-seven and forty eight hundredths (27.48) feet to a point in the northeasterly line of land conveyed by Hart & Crouse Corp. to Savage Arms Corporation by deed dated Oct. 31, 1952 and recorded in the Oneida County Clerk's Office in Book of Deeds No., 1383 at page 516; thence S.45 deg. 33 min. 40 sec. E along said northeasterly line nine hundred sixty-six and twenty-six hundredths (966.26) feet to the easterly corner of the land so conveyed by Hart & Crouse Corporation to Savage Arms Corporation; thence S. 39 deg. 56 min. E. along the Southeasterly line of the lands so conveyed, five and fifty-two hundredths feet (5.52) to a point in the northeasterly line of lands conveyed by New York Central Railroad Company to Savage Arms Corp. by deed dated June 14, 1941 and recorded in the Herkimer County Clerk's Office in Book of Deeds No. 342 at page 106; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line of the last mentioned parcel, one thousand and thirteen and ninety one hundredths (1013.91) feet to a point in the northerly right of way line of the New York Central (West Shore) Railroad; thence N. 65 deg. 17 min. W along said northerly right of way line two thousand forty four and no hundredths (2044.0) feet to a point in the southeasterly line of a parcel of land appropriated by the State of New York from Savage Arms Corporation February 20, 1930 as recorded in the Oneida County Clerk's Office in Book of Deeds No. 907 at page 331; thence N. 24 deg. 43 min. E along the southeasterly line of the land so appropriated, ten and twenty eight hundredths (10.28) feet; thence N. 49 deg. 18 min. 40 sec. W. along the northeasterly line of the land so appropriated, eight (8.0) feet; thence S. 40 deg. 41 min. 20 sec. W. along the north-westerly line of the land so appropriated and along the southeasterly line of Turner Street; thirteen (13.0) feet to a point in the aforesaid northerly line of the New York Central Railroad; thence N. 65 deg. 17 min. W. along said northerly right of way line two hundred forty five and ninety nine hundredths (245.99) feet to a point in the southeasterly line of Pixley Street; thence N. 40 deg. 41 min. 20 sec. E. along said Pixley St. line seven hundred fifty six and seventy one hundredths (756.71) feet to the point of beginning.

All as shown on a Map showing property of Savage Arms Corporation in the City of Utica, Oneida County, N.Y. and in the Town of Frankfort, Herkimer County, N.Y. made by Arthur J McLoughlin, Civil Engineer, and dated November 5, 1956 and filed on December 18, 1956 in the Office of the Oneida County Clerk.

Tract Two

All that certain parcel or parcels of land located in the City of Utica, County of Oneida, State of New York, more particularly described as follows: Commencing at a point on the southerly street boundary of the existing Dwyer Avenue at the intersection of said street boundary with the westerly street boundary of the existing Pitcher Street, said point marked by an iron pin; thence S 72° 43' 43" W 119.06 feet to the point of beginning, said point being the intersection of the southerly street boundary of the proposed relocation of Dwyer Avenue with the westerly street boundary of the proposed relocation of Pitcher Street; thence S 30° 30' 48" W along the last mentioned street boundary 630.52 feet to an angle point in said boundary; thence S 67° 33' 34" W continuing along said boundary 120.49 feet to a point on the northerly street boundary of the existing Ehlers Avenue; thence N 75° 23' 42" W along the last mentioned street boundary 162.80 feet to a point on the proposed northerly street boundary of the existing Beechgrove Place said point marked by an iron pin; thence N. 59° 39' 22" W along the last mentioned proposed street boundary 250.87 feet to a point on an easterly boundary of the property of International Heater Company (reputed owner), said point being a southeasterly corner of said property; thence N 30° 30' 55" E along the last mentioned boundary 770.64 feet to a point on the southerly street boundary of the proposed relocation of Dwyer Avenue; thence S 59° 39' 22" E along said street boundary 480.00 feet to the point of beginning. This parcel being Disposition Parcel 11B as shown on a Map entitled: "East Arterial Industrial Project Property Map Parcel 11B", dated Nov. 23, 1967, prepared by Dale Engineering Company Incorporated and filed in the Oneida County Clerk's Office.

Tract Three:

All that certain parcel or parcels of land located in the City of Utica, County of Oneida, State of New York, more particularly described as follows: Commencing at a point on the southerly street boundary of the existing Dwyer Avenue at

the intersection of said street boundary with the westerly street boundary of the existing Pitcher Street, said boundary being the northerly extension of the easterly street boundary of the proposed relocation of Pitcher Street, said point marked by an iron pin; thence S 30° 30' 48" W along the last mentioned existing street boundary 75.49 feet to the POINT OF BEGINNING, said point being marked by an iron pin, said point being the intersection of the last mentioned street boundary with the southerly street boundary of the proposed relocation of Dwyer Avenue; thence S 69° 37' 12" E along the last mentioned street boundary 310.56 feet to a point, said point being marked by an iron pin, said point being a northwesterly interior corner of the tract known as the East Arterial Industrial Project, said point also being a northwesterly corner of the property of Sperry Rand Corp. (reputed owner) thence S 30° 33' 34" W along an easterly boundary of said tract 747.41 feet to a point on a northerly right of way boundary of the West Shore Railroad, said point being a southeasterly corner of said tract, thence N 75° 22' 26" W along the last mentioned boundary 317.24 feet to a point; said point being the intersection of said railroad boundary with the easterly street boundary of the proposed relocation of Pitcher Street, said point being marked by an iron pin; thence N 30° 30' 48" E along said street boundary 779.61 feet to the point of beginning. This parcel being Disposition Parcel 12 as shown on a Map entitled "East Arterial Industrial Project Property Map Parcel 12" dated November 23, 1967 prepared by Dale Engineering Company Incorporated, and filed in the Oneida County Clerk's Office.

BEING the same premises conveyed to the Party of the First Part by deed dated July 1, 1977 and recorded in the Oneida County Clerk's Office on December 6, 1977 in Book of Deeds 2057 at page 457.

SUBJECT to the following easements to the extent they affect the above described premises:

1. Easement granted by Savage Arms Company to the New York Central and Hudson River Railroad Company dated May 25, 1900, and recorded in the Herkimer County Clerk's Office on July 19, 1900 in Book 172 of Deeds at Page 224;
2. Easement granted by Hart & Crouse Co. to The New York Central and Hudson River Railroad Company dated May 24, 1900 and recorded in the Herkimer County Clerk's Office on July 19, 1900 in Book 172 of Deeds at Page 227;
3. Easement granted by Hart & Crouse Company to the New York Central and Hudson River Railroad Company dated September 7, 1911 and recorded in the Herkimer County Clerk's Office on December 22, 1911 in Book 209 of Deeds at Page 426.
4. Rights of utility companies, if any, for utility service lines under easement not of record.

Herkimer County
Honorable Sylvia M Rowan County Clerk
109 Mary Street Suite 1111
Herkimer, New York 13350-2923

Instrument Number: 2009- 00150318

Recorded On: March 12, 2009

As
Deed

Parties: CAPITAL PRIME PROPERTIES TWO INC
To
CHARLESTOWN MALL OF UTICA LLC

Billable Pages: 5

Recorded By: MICHAEL J CANCELLA ESQ

Num Of Pages: 6

Comment:

**** Examined and Charged as Follows: ****

Deed	65.00	Coversheet	5.00	RP5217 Commercial	165.00
TP584 Affidavit	5.00				
Recording Charge:	240.00				
		Consideration			
	Amount	Amount	RS#/CS#		
Tax-Transfer	0.00	0.00	RS 1455	Basic	0.00
FRANKFORT T/O				Local	0.00
				Additional	0.00
				Special Additional	0.00
				Transfer	0.00
Tax Charge:	0.00				

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Herkimer County, NY

File Information:

Record and Return To:

Document Number: 2009- 00150318
Receipt Number: 102639
Recorded Date/Time: March 12, 2009 11:00:19A
Book-Vol/Pg: Bk-R VI-1306 Pg-646
Cashier / Station: K Cassella / Cashier Station 2

MICHAEL J CANCELLA ESQ
3 HOPPER STREET
UTICA NY 13501



Sylvia M. Rowan
Sylvia M Rowan Herkimer County Clerk

WARRANTY DEED

165
5
70'

THIS INDENTURE, made the 19th day of October, 2007, **BETWEEN**

CAPITAL PRIME PROPERTIES TWO, INC., PO Box 57, New Hartford, New York 13413

Party of the first part, and

CHARLESTOWN MALL OF UTICA, LLC, 3 Hopper Street, Utica, NY Drive East, Utica,
13501

Party of the second part,

WITNESSETH, that the party of the first part, in consideration of One and 00/100 (\$1.00) Dollar lawful money of the United States, and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, their heirs and assigns forever,

ALL THAT certain piece or parcel of land situate in the City of Utica, County of Oneida and State of New York, and all the tract or parcel located int the County of Herkimer, more particularly described in Schedule "A", which is attached.

TOGETHER, with the appurtenances and all the estate and rights of the parties of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the parties of the second part forever.

AND the parties of the first part covenants as follows:

FIRST, that the party of the second part shall quietly enjoy the said premises;

SECOND, that the parties of the first part will forever **WARRANT** the title to said premises;

THIRD, the parties of the first part, in compliance with Section 13 of the Lien Law, covenants that the parties of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the

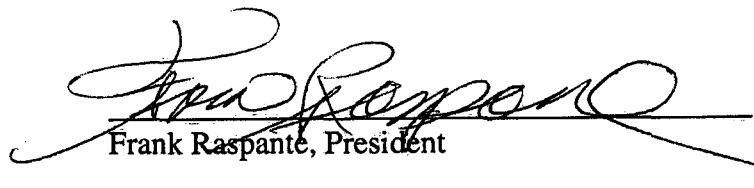
improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

CAPITAL PRIME PROPERTIES TWO, INC.


Frank Raspante, President

STATE OF NEW YORK)
COUNTY OF ONEIDA) ss.:

On the 19 day of October, 2007, before me, the undersigned a notary public in and for said state, personally appeared Frank Raspante, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose names are subscribed to within instrument, and acknowledged that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of the individual acted, executed the instrument.


Notary Public

MARY R. CANCELLA
Notary Public, State of New York
Reg. No. 01CA6185519
Qualified in Oneida County
Commission Expires April 21, 2012

RR
M. CANCELLA
3 HUPPER ST
UTICA, NY 13501

"SCHEDULE A"

PAGE 1 OF 3

All that certain piece or parcel of land situate in the city of Utica, County of Oneida and State of New York and in the Town of Frankfort, County of Herkimer and State of New York, bounded and described as follows:

Beginning at a point of intersection of the south line of Dwyer Avenue with the southeasterly line of Turner Street Extension, said point of beginning being located S 45° 33' 40" E, two hundred thirty seven feet (237.00) from the intersection of the south line of Dwyer Avenue with the easterly line of Pixley Ave.

Thence N. 40 deg. 41 min. 20 sec. E. along said Turner Street line twenty seven and forty eight hundredths (27.48) feet to the point in the northeasterly line of land conveyed by Hart & Crouse Corporation to Savage Arms Corporation by deed dated Oct. 31, 1952 and recorded in the Oneida County Clerk's Office in Book of Deeds No. 1383 at page 516; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line nine hundred sixty six and twenty six hundredths (966.26) feet to the easterly corner of the land so conveyed by Hart & Crouse Corporation to Savage Arms Corporation; thence S. 30 deg. 56 min. E. along the southeasterly line of lands so conveyed, five and fifty two hundredths feet (5.52') to a point in the northeasterly line of lands conveyed by New York Central Railroad Company to Savage Arms Corporation by deed dated June 14, 1941 and recorded in the Herkimer County Clerk's Office in Book of Deeds No. 342 at page 106; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line of the last mentioned parcel, one thousand and thirteen and ninety one hundredths (1013.91) feet to a point in the northerly right of way line of the New York Central

(WestShore) Railroad; thence N. 65 deg. 17 min. W. along said northerly right of way line two thousand forty four and no hundredths (2044.0) feet to a point in the southeasterly line of a parcel of land appropriated by the State of New York from Savage Arms Corporation February 20, 1930 as recorded in the Oneida County Clerk's Office in Book of Deeds No. 907 at page 331; thence N. 24 deg. 43 min. E. along the southeasterly line of the land so appropriated, ten and twenty eight hundredths (10.28) feet; thence N. 49 deg. 18 min. 40 sec. W. along the northeasterly line of the land so appropriated, eight (8.0) feet; to a point in the easterly line of Turner Street Extension; running thence northerly along the east line of Turner Street Extension to the point and place of beginning.

Together with a right of way to the grantees their heirs successors and/or assigns over Turner Street Extension from Dwyer Avenue South to the North line of the former New York Central Railroad.

Being part of the same premises conveyed to the party of the first part, Sperry Rand Corporation, by Savage Arms Corporation, by instrument dated December 12, 1956 and recorded in the office of the Oneida County Clerk at Liber 1537 at Page 318 and in the office of the Herkimer County Clerk at Book 506 at Page 196.

Being a part of the premises conveyed to Gaetano Associates-Limited partnership by Warranty Deed recorded in the Oneida County on Jun. 15, 1979 in Book 2082, page 367 and recorded in Herkimer County on Jun. 15, 1967 in Book 665, page 374.

SUBJECT TO ANY AND ALL COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

"SCHEDULE A"

ALSO, **ALL THOSE THREE PARCELS OF LAND**, one of which is situate in the Town of Frankfort, County of Herkimer and State of New York, and the other two thereof being situate in the City of Utica, County of Oneida and State of New York, separately bounded and described in Parcel A, Parcel B and Parcel C, according to two plans of a survey made by A. A. Santucci & Associates, dated November 25, 1977 and November 30, 1977, respectively, as follows: viz: **PARCEL A**, situate in Frankfort, Herkimer County, New York: **BEGINNING** at the point where the Northerly line of the former West Shore Railroad is intersected by the dividing line between Oneida County and Herkimer County; thence measuring 65 deg. 17 min. East along the Northerly line of the former West Shore Railroad, a distance of 1991.64 feet to a point marked by an iron pipe, said point being also the Easterly corner of a triangular parcel of land formerly owned by the Sperry Rand Corporation; thence measuring South 46 deg. 05 min. 33 sec. East a distance of 304.20 feet to a point on the Northerly line of Bleeker Street marked by an iron pipe, said point being opposite centerline Station 1202+273.57 on said Railroad's monumented centerline; thence measuring North 65 deg. 17 min. West, along the Northerly line of Bleeker Street, a distance of 2314.61 feet to a point on the dividing line between Oneida County and Herkimer County; thence at an interior angle of 70 deg. 20 min., measuring Northeasterly along said dividing line, a distance of 106.20 feet to the point of beginning.

Containing 215,312 square feet, or 4.95 acres, more or less.

EXCEPTING THEREOUT AND THEREFROM the parcel of land conveyed by the New York Central Railroad Company to Joseph P. Jonquil and Mary Jonquil by Deed recorded November 27, 1967 in the Herkimer County Clerk's Office at Book 591 of Deeds, page 885, being a parcel of land fronting on the Northerly line of Bleeker Street measuring 200 feet front and rear by 36.5 feet deep, located opposite and between centerline Stations 1204+166 and 1204+366 on said Railroad's monumented centerline.

SUBJECT, HOWEVER, (1) to any easement, encumbrance, right or benefit that may have been created recognized in or by a certain Deed to Consolidated Rail Corporation designated as Document No. PC-CRC-RP-113 in the certification, as amended, of United States Railway Association to the Special Court pursuant to Section 209(d) of the Regional Rail Reorganization Act of 1973; and (2) to the state of facts disclosed by the aforementioned survey.

SUBJECT TO any and all conditions, covenants, encumbrances, easements, restrictions, rights-of-way, right on benefit and state of fact.

BEING THE SAME PREMISES conveyed to Charles A. Gaetano from Spencer Boyce by Deed dated June 7, 1979, and recorded in the Oneida County Clerk's Office on July 17, 1979, in Book of Deeds 665, at page 988.

CONTRACT FOR SALVAGE RIGHTS
JLB ENTERPRISE 75N DIVISION ST
ST. JOHNSVILLE, NY 13452 518-332-6848

THIS CONTRACT IS BETWEEN CHARLESTOWN MALL
UTICA LLC 311 TURNER ST UTICA NY 13501
AND JLB ENTERPRISE 75N DIVISION ST
ST JOHNSVILLE NY 13452

THIS CONTRACT GIVES JLB ENTERPRISE
THE RIGHTS TO ALL: TIN, STEEL, WOOD, BRICK,
CAST IRON WHICH IS LOCATED ON THE NORTHEAST
ABANDONED BUILDING AT CHARLESTOWN MALL
UTICA NY JLB ENTERPRISE HAS THE
SALVAGE RIGHTS OF THE BOILER ROOM
WHICH CONTAINS STEEL BOILERS, PUMPS,
GENERATORS AND BRICKS - FOR THE
DEMOLITION OF THE BUILDING

SVAGEL
TO VARIOUS
WITH FRANK
REASAR

JLB ENTERPRISE WILL HAVE NO
DEMOLITION DEBTS OFF THE SITE.

THE OBJECT OF THE SITE IS TO LOOK
BETTER AFTER THEN BEFORE

JLB ENT. WILL BE FULLY RESPONSIBLE
FOR ANY INVOLVEMENT WITH DEC, EPA,
TOWN OF FRANKFORT, NY.

JLB ENT. WILL PROVIDE ALL PERMITS IF
NECESSARY.

SIGNATURE DATE
CHARLESTOWN MALL UTICA LLC


memoen

SIGNATURE DATE
JLB ENTERPRISE
James L. Bentz

AMENDED OPERATING AGREEMENT

OF

CHARLESTOWN MALL OF UTICA, LLC

WHEREAS, AN OPERATING AGREEMENT WAS EXECUTED ON OCTOBER 22, 2007, AND THE MEMBERS WISH TO AMEND SAME.

THIS AMENDED OPERATING AGREEMENT, dated January 2, 2008, by and between:

Michael J. Cancilla, residing at 3 Hopper Street, Utica, NY 13501, and Frank Raspante, residing at PO Box 57, New Hartford, NY 13413 (hereinafter referred to as member)

The Members hereby form a limited liability company pursuant to and in accordance with the Limited Liability Company Law of the State of New York, as amended from time to time (the "LLCL"), and hereby agree as follows:

1. Definitions. As used herein, the following terms and phrases shall have the meanings indicated:

1.1. "Act" shall mean the New York Limited Liability Company Act, as amended.

1.2. "Capital Account" shall mean, with respect to each Member, the account established for each Member pursuant to Section 6.5, which will initially equal the Capital Contributions of such Member and will be (a) increased by the amount of Net Profits allocated to such Member and (b) reduced by the amount of Net Losses allocated to such Member and the amount of Cash Flow distributed to such Member. Member's Capital Accounts shall be determined and maintained in accordance with the rules of paragraph (b)(2)(iv) of Regulation Section 1.704-1 of the Code.

1.3. "Capital Contributions" shall mean the fair market value of the amounts contributed by the Members pursuant to Section 6.1.

1.4. "Cash Flow" shall have the meaning provided in Section 7.1.

1.5. "Code" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent revenue laws.

1.6. "Operating Managers" shall mean the Member or Members selected by the Members in accordance with this Agreement to serve as Operating Manager or Operating Managers of the Company.

1.7. "Members" shall mean the persons designated as such in this Agreement, any

successor(s) to their interests as such in the Company; and any other person who pursuant to this Agreement shall become a Member, and any reference to a "Member" shall be to any one of the then Members.

1.8. "Net Profits" and "Net Losses" shall mean the net profit or net loss, respectively, of the Company determined in accordance with Section 8.1.

1.9. The words "membership interest" shall mean a Member's interest in the Company which shall be in proportion to his share of the current profits of the Company determined in accordance with Section 503 of the Act which states that profits and losses shall be allocated on the basis of the value of the contributions of each Member as stated in the Operating Agreement. A "majority in interest of the Members" and "two-thirds in interest of the Members" shall mean Members whose aggregate share of the current profits of the Company constitute more than one-half or two-thirds, respectively, of the aggregate shares of all of the Members.

1.10. "Company" shall mean this Limited Liability Company.

1.11. "Person" shall mean any natural person, corporation, partnership, joint venture, association, limited liability company or other business or legal entity.

2. **Name.** The name of the limited liability company formed hereby is CHARLESTOWN MALL OF UTICA, LLC (the "Company").

3. **Term.** The term of the Company shall continue until dissolved in accordance with the LLCL.

4. **Purpose.** The Company is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing.

5. **Members.** The name and the business, residence, or mailing address of the Members are as follows:

<u>Name</u>	<u>Address</u>
MICHAEL J. CANCELLA	7 HOMESTEAD COURT CLINTON, NY 13323
FRANK RASPANTE	PO BOX 57 NEW HARTFORD, NY 13413

6. **Management.**

6.1 General Manager. The Company shall be managed by a General Manager, who shall be the Operating Manager of the LLC and may, but need not, be a Member.

(1) MICHAEL J. CANCELLA and UPSTATE ASSOCIATES OF UTICA, INC. are hereby designated to serve as the initial General Managers.

(2) The General Manager shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs for Company purposes.

6.2 Limitation on Authority of Members. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member. This Section supersedes any authority granted to the Members pursuant to Section 401 of the Law. Any Member who takes any action or binds the Company in violation of this Section 6.1 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

6.3 Meetings of and Voting by Members. A meeting of the Members may be called at any time by the General Manager or by those Members holding at least 20 percent (20%) of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place in Clinton, New York designated by the Person calling the meeting.

(1) Not less than ten (10) nor more than sixty (60) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, hour, and purpose of the meeting.

(2) Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice.

(3) Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than a majority (over 50 percent) of the Percentages then held by Members constitutes a quorum.

(4) A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney in fact.

6.4 Except as otherwise provided in this Agreement, the affirmative vote of Members holding a majority (over 50 percent) or more of the Percentages then held by Members shall be

required to approve any matter coming before the Members.

6.5 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding such Percentages then held by Members as would be required for Members to take action under this operating agreement. No written consent shall be effective to take such action unless within sixty (60) days of the earliest dated consent delivered in accordance with the Law, signed consents sufficient to take such action have been likewise delivered. If such consent is not unanimous, prompt notice shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

6.6 *Personal Service.* No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the General Manager, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company. The General Manager shall be entitled to compensation for services performed for the Company in such amounts as determined by such members. Further, upon substantiation of the amount and purpose thereof, the General Manager shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

6.7 *Duties of Parties.* The General Manager shall devote such time to the business and affairs of the Company as is necessary to carry out the General Manager's duties set forth in this Agreement. Except as otherwise expressly provided in Section 5.4.3, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business.

(1) The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

(2) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

6.7 *Liability and Indemnification.* The General Manager shall not be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the General Manager within the scope of the authority conferred on the General Manager by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement. The Company shall indemnify the General Manager for any act performed by the General Manager within the scope of the authority conferred on the General Manager by this

Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

6.8 Power of Attorney. Each Member constitutes and appoints the General Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place, and stead, to make, execute, sign, acknowledge, and file:

(1) One or more articles of organization; all documents (including amendments to articles of organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement; any and all other certificates or other instruments required to be filed by the Company under the laws of the State of New York or of any other state or jurisdiction, including, without limitation

(2) Any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of New York; one or more fictitious or trade name certificates

(3) All documents which may be required to dissolve and terminate the Company and to cancel its articles of organization.

(4) The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Economic Interest, except that if the transferee is admitted as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution.

(5) Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or dis-affirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

7. Capital Contributions. The Members have contributed to the Company the following amounts in the form of cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to render services.

Name	Amount
MICHAEL J. CANCELLA	175,000.00
FRANK RASPANTE	100,000.00

8. Additional Contributions. No Member is required to make any additional capital contribution to the Company.

9. Allocation of Profits and Losses. The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.

10. Distribution. Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Members in the same proportion as their then capital account balances.

11. Assignments. A Member may not assign in whole or in part his limited liability company interest.

12. Withdrawal of a Member. A Member may withdraw from the Company in accordance with the LLCL.

13. Admission of Additional Members. One (1) or more additional members of the Company may be admitted to the Company with the consent of a majority of the Members.

14. Liability of Members. The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the LLCL.

15. Exculpation of Managers. A Manager shall not be liable for any breach of duty in such capacity, except that if a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that with respect to a distribution to Members his or her acts were not performed in accordance with the LLCL.

16. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of New York, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement: as of the 2ND day of January, 2008.



Michael J. Cancilla, Member



Frank Raspante, Member

OPERATING AGREEMENT

OF

CHARLESTOWN MALL OF UTICA, LLC

THIS OPERATING AGREEMENT, dated October 22, 2007, by and between:

Michael J. Cancilla, residing at 7 Homestead Court, Clinton, NY 13323, and Frank Raspante, residing at PO Box 57, New Hartford, NY 13413 (hereinafter referred to as member)

The Members hereby form a limited liability company pursuant to and in accordance with the Limited Liability Company Law of the State of New York, as amended from time to time (the "LLCL"), and hereby agree as follows:

1. Definitions. As used herein, the following terms and phrases shall have the meanings indicated:

1.1. "Act" shall mean the New York Limited Liability Company Act, as amended.

1.2. "Capital Account" shall mean, with respect to each Member, the account established for each Member pursuant to Section 6.5, which will initially equal the Capital Contributions of such Member and will be (a) increased by the amount of Net Profits allocated to such Member and (b) reduced by the amount of Net Losses allocated to such Member and the amount of Cash Flow distributed to such Member. Member's Capital Accounts shall be determined and maintained in accordance with the rules of paragraph (b)(2)(iv) of Regulation Section 1.704-1 of the Code.

1.3. "Capital Contributions" shall mean the fair market value of the amounts contributed by the Members pursuant to Section 6.1.

1.4. "Cash Flow" shall have the meaning provided in Section 7.1.

1.5. "Code" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent revenue laws.

1.6. "Operating Managers" shall mean the Member or Members selected by the Members in accordance with this Agreement to serve as Operating Manager or Operating Managers of the Company.

1.7. "Members" shall mean the persons designated as such in this Agreement, any successor(s) to their interests as such in the Company; and any other person who pursuant to this Agreement shall become a Member, and any reference to a "Member" shall be to any one of the then Members.

1.8. "Net Profits" and "Net Losses" shall mean the net profit or net loss, respectively, of the Company determined in accordance with Section 8.1.

1.9. The words "membership interest" shall mean a Member's interest in the Company which shall be in proportion to his share of the current profits of the Company determined in accordance with Section 503 of the Act which states that profits and losses shall be allocated on the basis of the value of the contributions of each Member as stated in the Operating Agreement. A "majority in interest of the Members" and "two-thirds in interest of the Members" shall mean Members whose aggregate share of the current profits of the Company constitute more than one-half or two-thirds, respectively, of the aggregate shares of all of the Members.

1.10. "Company" shall mean this Limited Liability Company.

1.11. "Person" shall mean any natural person, corporation, partnership, joint venture, association, limited liability company or other business or legal entity.

2. **Name.** The name of the limited liability company formed hereby is CHARLESTOWN MALL OF UTICA, LLC (the "Company").

3. **Term.** The term of the Company shall continue until dissolved in accordance with the LLCL.

4. **Purpose.** The Company is formed for the purpose of engaging in any lawful act or activity for which limited liability companies may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing.

5. **Members.** The name and the business, residence, or mailing address of the Members are as follows:

<u>Name</u>	<u>Address</u>
MICHAEL J. CANCELLA	7 HOMESTEAD COURT CLINTON, NY 13323
FRANK RASPANTE	PO BOX 57 NEW HARTFORD, NY 13413

6. **Management.**

6.1 **General Manager.** The Company shall be managed by a General Manager, who shall be the Operating Manager of the LLC and may, but need not, be a Member.

(1) MICHAEL J. CANCELLA is hereby designated to serve as the initial General Managers.

(2) The General Manager shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs for Company purposes

6.2 Limitation on Authority of Members. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member. This Section supersedes any authority granted to the Members pursuant to Section 401 of the Law. Any Member who takes any action or binds the Company in violation of this Section 6.1 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

6.3 Meetings of and Voting by Members. A meeting of the Members may be called at any time by the General Manager or by those Members holding at least 20 percent (20%) of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place in Clinton, New York designated by the Person calling the meeting.

(1) Not less than ten (10) nor more than sixty (60) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the place, date, hour, and purpose of the meeting.

(2) Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice.

(3) Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than a majority (over 50 percent) of the Percentages then held by Members constitutes a quorum.

(4) A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney in fact.

6.4 Except as otherwise provided in this Agreement, the affirmative vote of Members holding a majority (over 50 percent) or more of the Percentages then held by Members shall be required to approve any matter coming before the Members.

6.5 In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding such Percentages then held by Members as would be required for Members to take action under this operating agreement. No written consent shall be effective to take such action unless within sixty (60) days of the earliest dated consent delivered in accordance with the Law, signed consents sufficient to take such action have been likewise delivered. If such consent is not unanimous, prompt notice shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

6.6 *Personal Service.* No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the General Manager, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company. The General Manager shall be entitled to compensation for services performed for the Company in such amounts as determined by such members. Further, upon substantiation of the amount and purpose thereof, the General Manager shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

6.7 *Duties of Parties.* The General Manager shall devote such time to the business and affairs of the Company as is necessary to carry out the General Manager's duties set forth in this Agreement. Except as otherwise expressly provided in Section 5.4.3, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business.

(1) The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

(2) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

6.7 *Liability and Indemnification.* The General Manager shall not be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the General Manager within the scope of the authority conferred on the General Manager by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement. The Company shall indemnify the General Manager for any act performed by the General Manager within the scope of the authority conferred on the General Manager by this Agreement, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

6.8 Power of Attorney. Each Member constitutes and appoints the General Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place, and stead, to make, execute, sign, acknowledge, and file:

(1) One or more articles of organization; all documents (including amendments to articles of organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement; any and all other certificates or other instruments required to be filed by the Company under the laws of the State of New York or of any other state or jurisdiction, including, without limitation

(2) Any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of New York; one or more fictitious or trade name certificates

(3) All documents which may be required to dissolve and terminate the Company and to cancel its articles of organization.

(4) The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Economic Interest, except that if the transferee is admitted as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution.

(5) Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or dis-affirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

7. Capital Contributions. The Members have contributed to the Company the following amounts in the form of cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to render services.

Name	Amount
MICHAEL J. CANCELLA	175,000.00
FRANK RASPANTE	100,000.00

8. Additional Contributions. No Member is required to make any additional capital contribution to the Company.

9. Allocation of Profits and Losses. The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.

10. Distribution. Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Members in the same proportion as their then capital account balances.

11. Assignments. A Member may not assign in whole or in part his limited liability company interest.

12. Withdrawal of a Member. A Member may withdraw from the Company in accordance with the LLCL.

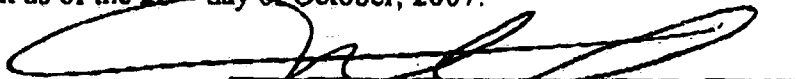
13. Admission of Additional Members. One (1) or more additional members of the Company may be admitted to the Company with the consent of a majority of the Members.

14. Liability of Members. The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the LLCL.

15. Exculpation of Managers. A Manager shall not be liable for any breach of duty in such capacity, except that if a judgment or other final adjudication adverse to him or her establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that with respect to a distribution to Members his or her acts were not performed in accordance with the LLCL.

16. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of New York, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Operating Agreement as of the 22ND day of October, 2007.



Michael J. Cancilla, Member



Frank Raspanti, Member

ELECTRONIC RECORD TARGET SHEET

SITE NAME:	CHARLESTOWN MALL SITE
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CERCLIS ID:	NYC200400513
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SDMS DOC ID:	284619
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ALT. MEDIA TYPE:	N/A
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DOCUMENT FORMAT:	PDF
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NATIVE FORMAT LOCATION/FILENAME:	N/A
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COMMENTS:	DOCUMENTS HAVE BEEN REMOVED BECAUSE IT CONTAINS CBI.
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